

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JACOB R.

Claimant,

vs.

CENTRAL VALLEY REGIONAL
CENTER,

Service Agency.

OAH No. N2006060073

DECISION

Administrative Law Judge Robert Walker, State of California, Office of Administrative Hearings, heard this matter in Fresno, California, on March 9, 2007.

Shelley Celaya, Client Appeals Specialist for Central Valley Regional Center, represented the regional center.

April R., Claimant's mother, represented the claimant, Jacob R.

ISSUE

The ultimate issue is whether claimant is entitled to regional center services.

Intermediate issues are: Is claimant autistic? Is he eligible under the so-called fifth category? That is, does he have a disabling condition closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation?¹

¹ The fifth category is found in Welfare and Institutions Code, section 4512, subdivision (a).

FACTUAL FINDINGS

BACKGROUND

1. Claimant, Jacob R., was born on November 13, 1986. In 2006, claimant applied for regional center services. He contends that he is autistic. He contends, also, that he is eligible under the so-called fifth category. That is, he contends that he has a disabling condition closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation.

2. Regional center denied the application, and claimant appealed.

DIAGNOSING AUTISM

3. Whether a diagnosis of autism is warranted depends on whether a subject meets the diagnostic criteria set forth in the Diagnostic and Statistical Manual, Fourth Edition, Text Revised (DSM-IV TR). Beginning with section 299.00, at page 69, the DSM-IV TR deals with "Pervasive Developmental Disorders," which include autism.

4. Section 299.00 of the DSM-IV TR, beginning at page 70, concerns autistic disorder. To diagnose autism, one must find that the subject has qualitative impairments in social interaction; at least one qualitative impairment in communication; and at least one restricted, repetitive, and stereotyped pattern of behavior, interest, or activity. One must find a total of at least six of these items. One must find that the impairments in social interaction and communication are marked and sustained. One also must find that there are delays or abnormal functioning in social interaction, language as used in social communication, or symbolic or imaginative play. Finally, one must find that the onset of the delays or abnormal functioning was prior to three years of age.

5. Section 299.00 of the DSM-IV TR requires that one find a qualitative impairment in social interaction as manifested by at least two of the following:

- (a) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction
- (b) failure to develop peer relationships appropriate to developmental level
- (c) a lack of spontaneous seeking to share enjoyment, interests, or achievements with other people
- (d) lack of social or emotional reciprocity.

6. Section 299.00 of the DSM-IV TR requires that one find a qualitative impairment in communication as manifested by at least one of the following:

(a) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime)

(b) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others

(c) stereotyped and repetitive use of language or idiosyncratic language

(d) lack of varied, spontaneous make-believe play or social imitative play appropriate to the developmental level.

7. Section 299.00 of the DSM-IV TR requires that one find restricted repetitive and stereotyped patterns of behavior, interests, and activities as manifested by at least one of the following:

(a) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus

(b) apparently inflexible adherence to specific, nonfunctional routines or rituals

(c) stereotyped and repetitive motor mannerisms

(d) persistent preoccupation with parts of objects.

8. Section 299.00, at page 69, also provides as follows:

Pervasive Developmental Disorders are characterized by *severe and pervasive impairment* in several areas of development The qualitative impairments that define these conditions are *distinctly deviant* relative to the individual's developmental level or mental age These disorders are usually evident in the first years of life (Emphasis added.)

9. Thus, it is not enough merely to find a qualitative impairment. One must also find that that impairment is severe and pervasive.

EVIDENCE FROM A QUALIFIED EXPERT THAT CLAIMANT SHOWS SYMPTOMS OF AUTISM

10. Dr. Ronald Sheldon is a licensed psychologist with Valley Family Health Center in Riverdale, California. Dr. Sheldon has known claimant since 2001, when claimant was 14 years old.

11. No qualified expert has diagnosed claimant as autistic. Dr. Sheldon, however, has observed that claimant shows symptoms of autism, and Dr. Sheldon recommended that claimant be evaluated by a psychiatrist or psychologist.

EVIDENCE FROM QUALIFIED EXPERTS THAT CLAIMANT IS NOT AUTISTIC

12. On March 10, 2006, Nancy N. Doi, Psy.D., Clinical Psychologist, did a psychological evaluation of claimant and wrote a report. Dr. Doi wrote that one of the reasons for the evaluation was to address a concern that claimant might be autistic.

13. Dr. Doi noted that the records she reviewed indicated that, when claimant was two years old, he was diagnosed with attention deficit/hyperactivity disorder (ADHD).

14. Dr. Doi wrote:

Observation in today's evaluation indicated initial avoidance of eye contact, but upon participation in the structured cognitive testing, Jacob appeared to be able to look the examiner in the eye and laugh quite often, albeit possibly nervously, throughout the evaluation.

15. Dr. Doi administered the Wechsler Adult Intelligence Scale, third edition (WAIS – III). She also completed two adaptive behavior questionnaires.

16. Dr. Doi recorded the following test results from the WAIS – III.

Verbal IQ = 101

Performance IQ = 85

Full Scale IQ = 94

17. Dr. Doi concluded as follows:

It is with ninety-five percent confidence that we can report that Jacob's true score lies between 96 and 106 and is solidly in the average range on this comprehensive assessment of cognitive ability. There does appear to be a significant discrepancy

between verbal and nonverbal skills with a strength in verbal skills.

18. On Axis I, Dr. Doi diagnosed ADHD. She made a provisional diagnosis of 300.0 anxiety disorder, NOS. She also noted a need to do further evaluation regarding pervasive developmental disorder and posttraumatic stress disorder. She did not diagnose autistic disorder.

19. Carol Sharp, Ph.D., is a psychologist with the regional center. Dr. Sharp has a doctorate in clinical psychology.

20. Dr. Sharp met with claimant. She also reviewed Dr. Doi's report. Dr. Sharp testified that, applying the diagnostic criteria set forth in the DSM-IV TR, one must conclude that claimant is not autistic.

21. Dr. Sharp referred to Dr. Doi's statement that one of the reasons for her evaluation was to address a concern that claimant might be autistic. Dr. Sharp said that, if Dr. Doi's evaluation had shown claimant to be autistic, she would have reported that at Axis I. The fact that she did not means that she ruled out autism.

22. Regarding Dr. Sheldon's observation that claimant shows symptoms of autism, Dr. Sharp testified that many people show some symptoms of autism but are not autistic. And regarding Dr. Sheldon's recommendation that claimant be evaluated by a psychiatrist or psychologist, Dr. Sharp noted that Dr. Doi did precisely the sort of evaluation Sr. Sheldon suggested.

TESTIMONY OF CLAIMANT'S MOTHER AND A FAMILY FRIEND

23. Dianne Brown is a friend of claimant's family who, along with her husband, has dedicate many hours to helping the family cope with myriad distressing tribulations. Ms. Brown has some familiarity with certain autistic behaviors because a member of her family is diagnosed with autistic disorder.

24. Ms. Brown and claimant's mother both testified to a number of claimant's behaviors that appear to them to indicate that he is autistic. As noted above, however, Dr. Sharp testified that many people show some symptoms of autism but are not autistic.

LEGAL CONCLUSIONS

1. One is eligible for regional center services if one is developmentally disabled. The Lanterman Act² defines developmental disability.

² The Lanterman Developmental Disabilities Services Act begins at Welfare and Institutions Code section 4400.

"Developmental disability" means a disability that originates before an individual attains age 18 years, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.³

2. Claimant did not contend that he is eligible for regional center services under the categories of mental retardation, cerebral palsy, or epilepsy. He did contend that he is eligible under the fifth category. But no evidence was presented to support that contention. That is, no evidence was presented that claimant has a disabling condition closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation.

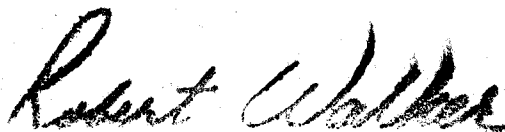
3. By reason of the matters stated in Findings 3 through 22, it is determined that claimant is not autistic. Dr. Sharp's testimony that the evidence shows that claimant is not autistic was consistent with the diagnostic requirements of the DSM-IV TR and was very persuasive. And Dr. Doi, who did a psychological evaluation, did not diagnose autism.

4. Claimant is not eligible for Lanterman Act services.

ORDER

Claimant's appeal from regional center's determination that he is not eligible for regional center services is denied.

DATED: 3/23/07



ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings

³ Welf. & Inst. Code, § 4512(a).

NOTICE

This is a final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.